

**SOUTH DAKOTA DEPARTMENT OF ENVIRONMENT  
AND NATURAL RESOURCES**

**JOE FOSS BUILDING  
523 EAST CAPITOL AVENUE  
PIERRE, SD 57501-3181**

**SURFACE WATER DISCHARGE PERMIT  
AUTHORIZING DISCHARGE  
UNDER THE  
SOUTH DAKOTA SURFACE WATER DISCHARGE SYSTEM**

In compliance with the provisions of the South Dakota Water Pollution Control Act and the Administrative Rules of South Dakota, Article 74:52,

the *City of Vermillion*

is authorized under this permit to discharge to

the *Vermillion River*

from its wastewater treatment facility located about ½ mile south of the city in the northwest ¼ of Section 30, Township 92 North, Range 51 West in Clay County, South Dakota (Latitude 42.762467°, Longitude -96.918358°) in accordance with discharge points, effluent limits, monitoring requirements, and other conditions set forth herein. Authorization is limited to those outfalls specifically listed in the permit. The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the South Dakota Water Pollution Control Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modifications; or for denial of a permit renewal application.

This permit shall become effective October 1, 2012.

This permit and the authorization to discharge shall expire at midnight, September 30, 2017.

Signed this 1<sup>st</sup> day of October, 2012



Authorizing Permitting Official

Steven M. Pirner  
Secretary  
Department of Environment and Natural Resources

## TABLE OF CONTENTS

COVER SHEET – Issuance, Effective, and Expiration Dates

TABLE OF CONTENTS .....	2
COVER SHEET – ISSUANCE, EFFECTIVE, AND EXPIRATION DATES.....	2
DEFINITIONS.....	4
1.0 EFFLUENT LIMITS AND MONITORING REQUIREMENTS.....	7
1.1 DESCRIPTION OF DISCHARGE POINTS .....	7
1.2 INTERIM EFFLUENT LIMITS.....	8
1.3 FINAL EFFLUENT LIMITS .....	10
1.4 INTERIM SELF-MONITORING REQUIREMENTS.....	10
1.5 FINAL SELF-MONITORING REQUIREMENTS.....	12
1.6 WHOLE EFFLUENT TOXICITY TESTING – ACUTE TOXICITY .....	14
1.7 TOXICITY REDUCTION EVALUATION (TRE)/TOXICITY IDENTIFICATION EVALUATION (TIE) .....	14
1.8 CHRONIC TOXICITY LIMIT-REOPENER PROVISION.....	14
1.9 INSPECTION REQUIREMENTS .....	15
2.0 MONITORING, RECORD KEEPING, AND REPORTING REQUIREMENTS.....	16
2.1 REPRESENTATIVE SAMPLING.....	16
2.2 MONITORING PROCEDURES.....	16
2.3 REPORTING OF MONITORING RESULTS .....	16
2.4 SIGNATORY REQUIREMENTS .....	16
2.5 ADDITIONAL MONITORING BY THE PERMITTEE .....	17
2.6 RECORDS CONTENTS .....	17
2.7 DUTY TO PROVIDE INFORMATION.....	17
2.8 OTHER INFORMATION.....	17
2.9 PLANNED CHANGES .....	17
2.10 RETENTION OF RECORDS.....	17
2.11 TWENTY-FOUR HOUR NOTICE OF NONCOMPLIANCE REPORTING .....	17
2.12 OTHER NONCOMPLIANCE REPORTING.....	18
2.13 PERMIT TRANSFERS .....	18
3.0 COMPLIANCE REQUIREMENTS.....	19
3.1 DUTY TO COMPLY.....	19
3.2 DUTY TO MITIGATE .....	19
3.3 PROPER OPERATION AND MAINTENANCE .....	19
3.4 NEED TO HALT OR REDUCE ACTIVITY NOT A DEFENSE.....	19
3.5 INSPECTION AND ENTRY .....	19
3.6 REMOVED SUBSTANCES .....	19
3.7 BYPASS OF TREATMENT FACILITIES .....	19
3.8 SANITARY SEWER OVERFLOWS.....	20
3.9 UPSET CONDITIONS.....	21
3.10 DUTY TO REAPPLY .....	21
3.11 AVAILABILITY OF REPORTS.....	21
3.12 PROPERTY RIGHTS.....	21
3.13 SEVERABILITY.....	21
3.14 REOPENER PROVISION.....	21
3.15 TOXICITY LIMIT-REOPENER PROVISION .....	22
3.16 PERMIT ACTIONS .....	22
3.17 INDUSTRIAL WASTES .....	23
4.0 PENALTIES FOR NONCOMPLIANCE.....	25
4.1 PENALTIES FOR VIOLATIONS OF PERMIT CONDITIONS .....	25

**4.2    PENALTIES FOR TAMPERING ..... 25**  
**4.3    PENALTIES FOR FALSIFICATION OF REPORTS ..... 25**  
**4.4    OIL AND HAZARDOUS SUBSTANCE LIABILITY ..... 25**

## DEFINITIONS

**30-day (and monthly) average** means the arithmetic average of all samples collected during a consecutive 30-day period or calendar month, whichever is applicable. The calendar month shall be used for purposes of reporting self-monitoring data on discharge monitoring report forms.

**7-day (and weekly) average** means the arithmetic mean of all samples collected during a consecutive 7-day period or calendar week, whichever is applicable. The calendar week, which begins on Sunday and ends on Saturday, shall be used for purposes of reporting self-monitoring data on discharge monitoring report forms. Weekly averages shall be calculated for all calendar weeks with Saturdays in the month. If a calendar week overlaps two months (i.e., the Sunday is in one month and the Saturday in the following month), the weekly average calculated for that calendar week shall be included in the data for the month that contains the Saturday.

**ARSD** means the Administrative Rules of South Dakota.

**Acute Toxicity** occurs when 50 percent or more mortality is observed for either species at any effluent concentration. Mortality in the control must simultaneously be 10 percent or less for the effluent results to be considered valid.

The **Approval Authority** is the Secretary of the South Dakota Department of Environment and Natural Resources.

An **Authorized Release** is a discharge from a permitted outfall that meets all permit conditions and effluent limits.

**BOD<sub>5</sub>** means Five-Day Biochemical Oxygen Demand. BOD is a measurement of the amount of oxygen utilized by the decomposition of organic material, over a specified time period (usually 5 days) in a sample.

A **Bypass** is the intentional diversion of waste streams from any portion of a treatment facility. Bypasses do not include releases from the sanitary sewer collection system (see sanitary sewer overflow) or unauthorized releases from the treatment facility (see unauthorized release). Bypasses may result in a discharge or unauthorized release.

**cfs** is the measure of flow rate meaning cubic feet per second

**Chronic Toxicity** occurs when the survival, growth, or reproduction, as applicable, for either test species, at the effluent dilution(s) designated in this permit, is significantly less (at the 95 percent confidence level) than that observed for the control specimens.

**Composite Samples** shall be flow proportioned. The composite sample shall contain at least four samples collected over the compositing period. Unless otherwise specified, the time between the collection of the first sample and the last sample shall not be less than six hours nor more than 24 hours. Acceptable methods for preparation of composite samples are as follows:

1. Constant time interval between samples, sample volume proportional to flow rate at time of sampling;
2. Constant time interval between samples, sample volume proportional to total flow (volume) since last sample. For the first sample, the flow rate at the time the sample was collected may be used;
3. Constant sample volume, time interval between samples proportional to flow (i.e., sample taken every "X" gallons of flow); and,
4. Continuous collection of sample, with sample collection rate proportional to flow rate.

**Daily Maximum (Daily Max.)** is the maximum value allowable in any single sample or instantaneous measurement.

**DMR** means Discharge Monitoring Report, EPA Form 3320-1, which is filled out to report sampling data.

**EPA or U.S. EPA** means United States Environmental Protection Agency.

A **Grab Sample**, for monitoring requirements, is a single “dip and take” sample collected at a representative point in the discharge stream.

**IC25** (Inhibition Concentration) is a point estimate of the toxicant concentration that would cause a 25% reduction in a nonlethal biological measurement of the test organism, such as reproduction or growth.

**IU** means industrial user.

An **Instantaneous Measurement**, for monitoring requirements, is a single reading, observation, or measurement either taken at the facility or within 15 minutes of the sample.

**MGD** is the measure of flow rate meaning million gallons per day

**NOEC** (No Observed Effect Concentration) is the highest tested concentration of an effluent or a toxicant at which no adverse effects are observed on the aquatic test organism at a specific time of observation. Determined using hypothesis testing.

**pH** is the measure of the hydrogen ion concentration of water or wastewater; expressed as the negative log of the hydrogen ion concentration. A pH of 7 is neutral. A pH less than 7 is acidic, and a pH greater than 7 is basic.

A **Publicly-owned Treatment Works** or **POTW** is any device or system used in the treatment, including recycling and reclamation, of municipal sewage or industrial waste of a liquid nature, which is owned by the state, or a municipality. This term includes sewers, pipes, or other conveyances only if they convey wastewater to a publicly owned treatment works providing treatment.

A **Sanitary Sewer Overflow** is the intentional or unintentional discharge of untreated sewage from the sanitary sewer collection system; including sewer lines, manholes, lift stations, etc.

**SDDENR** means the South Dakota Department of Environment and Natural Resources.

**Secretary** means the Secretary of the South Dakota Department of Environment and Natural Resources, or authorized representative.

**Severe Property Damage** is substantial physical damage to property, damage to the treatment facilities, which causes them to become inoperable, or substantial and permanent loss of natural resources, which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

**Sewage Sludge** is any solid, semi-solid, or liquid residue removed during the treatment of municipal wastewater or domestic sewage. Sewage sludge includes but is not limited to solids removed during primary, secondary, or advanced wastewater treatment, scum, septage, portable toilet pumpings, and sewage sludge products. Sewage sludge does not include grit, screenings, or ash generated during the incineration of sewage sludge.

**Significant Industrial User (SIU)** is defined as an industrial user discharging to a publicly owned treatment works that satisfies any of the following:

1. has a process wastewater flow of 25,000 gallons or more per average work day or contributes five percent or more of the average dry weather hydraulic or organic capacity of the municipal system receiving the waste;
2. is subject to Categorical Pretreatment Standards under 40 CFR 403.6 and 40 CFR Chapter I, Subchapter N; or
3. is determined by the Control Authority to have a reasonable potential to adversely impact the POTW's operation or for violating any pretreatment standard or requirement (in accordance with 40 CFR 403.8(f)(6)).

**TSS** means Total Suspended Solids. TSS is a measure of the filterable solids present in a sample.

An **Unauthorized Release** is a discharge from the lower end of the treatment or containment system through a release structure or over or through retention dikes that does not meet all permit conditions or effluent limits. An unauthorized release is distinguished from a sanitary sewer overflow in that a sanitary sewer overflow discharges wastewater prior to treatment or containment.

An **Upset** is an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limits because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

## **1.0 EFFLUENT LIMITS AND MONITORING REQUIREMENTS**

### **1.1 Description of Discharge Points**

The authorization to discharge provided under this permit is limited to those outfalls specifically designated below as discharge locations. Discharges at any location not authorized under this permit is a violation of the South Dakota Water Pollution Control Act and could subject the person(s) responsible for such discharge to penalties under Section 34A-2-75 of the Act. Knowingly discharging from an unauthorized location or failing to report an unauthorized discharge within a reasonable time from the permittee first learning of an unauthorized discharge could subject the permittee to penalties as provided under the South Dakota Water Pollution Control Act.

<b>Outfall Number</b>	<b>Description of Discharge Point(s)</b>
001	Any discharge from the wastewater treatment facility outfall following the redwood cascade aerator to the Vermillion River (Latitude 42.762220° Longitude -96.916571°)

## 1.2 Interim Effluent Limits

Effective immediately and lasting through **April 30, 2013**, the quality of effluent discharged by the facility shall, as a minimum, meet the limits as set forth below:

Effluent Characteristic	Effluent Limit		
	30-Day Average <sup>1</sup>	7-Day Average <sup>1</sup>	Daily Maximum <sup>1</sup>
Five Day Biochemical Oxygen Demand (BOD <sub>5</sub> ), mg/L	30	45	N/A
Total Suspended Solids (TSS), mg/L	30	45	N/A
Fecal Coliform, no./100 mL <sup>2</sup> (May 1 – September 30)	1,000	N/A	2,000
Total Coliform, no./100 mL <sup>3</sup>	5,000	N/A	20,000
Ammonia-Nitrogen (as N), lbs/day <sup>4</sup>			
January 1 – January 31	56.7 lbs/day	N/A	116.8 lbs/day
February 1 – February 29	73.4 lbs/day	N/A	116.8 lbs/day
March 1 – March 31	33.4 lbs/day	N/A	116.8 lbs/day
April 1 – April 30	46.7 lbs/day	N/A	133.4 lbs/day
May 1 – May 31	73.4 lbs/day	N/A	86.7 lbs/day
June 1 – June 30	76.7 lbs/day	N/A	86.7 lbs/day
July 1 – July 31	63.4 lbs/day	N/A	86.7 lbs/day
August 1 – August 31	66.7 lbs/day	N/A	86.7 lbs/day
September 1 – September 30	63.4 lbs/day	N/A	86.7 lbs/day
October 1 – October 31	70.1 lbs/day	N/A	170.1 lbs/day
November 1 – November 30	83.4 lbs/day	N/A	150.1 lbs/day
December 1 – December 31	56.7 lbs/day	N/A	100.1 lbs/day

<sup>1</sup> See Definitions.

<sup>2</sup> Fecal Coliform organisms from May 1 to September 30 shall not exceed a concentration of 1,000 per 100 milliliters as a geometric mean based on a minimum of five samples obtained during separate 24-hour periods for any calendar month. They shall not exceed 2,000 per 100 milliliters in any one sample from May 1 to September 30.

<sup>3</sup> Total Coliform organisms shall not exceed a concentration of 5,000 per 100 milliliters as a geometric mean based on a minimum of five samples obtained during separate 24-hour periods for any calendar month. They shall not exceed 20,000 per 100 milliliters in any one sample.

<sup>4</sup> The pounds per day shall be calculated for each sample based on the concentration and the flow discharged (in MGD) using the following equation:  $Q \times C \times 8.346$ , where: Q = Effluent Flow in MGD; C = Sample concentration in mg/L

<sup>5</sup> The permittee has been approved to alternate test species, conducting an acute toxicity test using *Ceriodaphnia dubia* in one quarter, and an acute toxicity test using *Pimephales promelas* (fathead minnows) in the next quarter.



Effluent Characteristic	Effluent Limit		
	30-Day Average <sup>1</sup>	7-Day Average <sup>1</sup>	Daily Maximum <sup>1</sup>
Oil and Grease (hexane ext), mg/L	N/A	N/A	1.0
The pH of the discharge shall not be less than 6.5 standard units nor greater than 9.0 standard units in any sample.			
The Dissolved Oxygen concentration in the discharge shall not be less than 5.0 mg/L in any sample.			
There shall be no Acute Whole Effluent Toxicity in the discharge, as measured by the WET test. <sup>5</sup>			
There shall be no discharge of floating solids or foam in other than trace amounts.			
No chemicals, such as chlorine, shall be used without prior written permission.			
Percentage Removal Requirements (TSS and BOD <sub>5</sub> Limit): In addition to the concentration limit on TSS and BOD <sub>5</sub> indicated above, the arithmetic mean of the TSS and BOD <sub>5</sub> concentration for effluent samples collected in a period of 30 consecutive days shall not exceed 15 percent of the arithmetic mean of the concentration for influent samples collected at approximately the same times during the same period (85 percent removal).			

### 1.3 Final Effluent Limits

Effective **May 1, 2013**, the quality of effluent discharged by the facility shall, as a minimum, meet the limits as set forth below:

Effluent Characteristic	Effluent Limit		
	30-Day Average <sup>1</sup>	7-Day Average <sup>1</sup>	Daily Maximum <sup>1</sup>
Five Day Biochemical Oxygen Demand (BOD <sub>5</sub> ), mg/L	30	45	N/A
Total Suspended Solids (TSS), mg/L	30	45	N/A
<i>Escherichia coli</i> ( <i>E. coli</i> ), no./100 mL <sup>2</sup> (May 1 – September 30)	630	N/A	1,178
Total Coliform, no./100 mL <sup>3</sup>	5,000	N/A	20,000
Ammonia-Nitrogen (as N), lbs/day <sup>4</sup>			
January 1 – January 31	56.7 lbs/day	N/A	116.8 lbs/day
February 1 – February 29	73.4 lbs/day	N/A	116.8 lbs/day
March 1 – March 31	33.4 lbs/day	N/A	116.8 lbs/day
April 1 – April 30	46.7 lbs/day	N/A	133.4 lbs/day
May 1 – May 31	73.4 lbs/day	N/A	86.7 lbs/day
June 1 – June 30	76.7 lbs/day	N/A	86.7 lbs/day
July 1 – July 31	63.4 lbs/day	N/A	86.7 lbs/day
August 1 – August 31	66.7 lbs/day	N/A	86.7 lbs/day
September 1 – September 30	63.4 lbs/day	N/A	86.7 lbs/day
October 1 – October 31	70.1 lbs/day	N/A	170.1 lbs/day
November 1 – November 30	83.4 lbs/day	N/A	150.1 lbs/day
December 1 – December 31	56.7 lbs/day	N/A	100.1 lbs/day
Oil and Grease (hexane ext), mg/L	N/A	N/A	1.0
The pH of the discharge shall not be less than 6.5 standard units nor greater than 9.0 standard units in any sample.			

<sup>1</sup> See Definitions.

<sup>2</sup> *E. coli* organisms from May 1 to September 30 shall not exceed a concentration of 630 per 100 milliliters as a geometric mean based on a minimum of 5 samples obtained during separate 24-hour periods for any calendar month. They shall not exceed 1,178 per 100 milliliters in any one sample from May 1 to September 30.

<sup>3</sup> Total Coliform organisms shall not exceed a concentration of 5,000 per 100 milliliters as a geometric mean based on a minimum of five samples obtained during separate 24-hour periods for any calendar month. They shall not exceed 20,000 per 100 milliliters in any one sample.

<sup>4</sup> The pounds per day shall be calculated for each sample based on the concentration and the flow discharged (in MGD) using the following equation: Q x C x 8.346, where: Q = Effluent Flow in MGD; C = Sample concentration in mg/L

<sup>5</sup> The permittee has been approved to alternate test species, conducting an acute toxicity test using *Ceriodaphnia dubia* in one quarter, and an acute toxicity test using *Pimephales promelas* (fathead minnows) in the next quarter.

Effluent Characteristic	Effluent Limit		
	30-Day Average <sup>1</sup>	7-Day Average <sup>1</sup>	Daily Maximum <sup>1</sup>
The Dissolved Oxygen concentration in the discharge shall not be less than 5.0 mg/L in any sample.			
There shall be no Acute Whole Effluent Toxicity in the discharge, as measured by the WET test. <sup>5</sup>			
There shall be no discharge of floating solids or foam in other than trace amounts.			
No chemicals, such as chlorine, shall be used without prior written permission.			
Percentage Removal Requirements (TSS and BOD <sub>5</sub> Limit): In addition to the concentration limit on TSS and BOD <sub>5</sub> indicated above, the arithmetic mean of the TSS and BOD <sub>5</sub> concentration for effluent samples collected in a period of 30 consecutive days shall not exceed 15 percent of the arithmetic mean of the concentration for influent samples collected at approximately the same times during the same period (85 percent removal).			

#### 1.4 Interim Self-Monitoring Requirements

Effective immediately and lasting through **April 30, 2013**, all discharges, sanitary sewer overflows, and unauthorized releases shall be monitored for the following parameters at the frequency and with the type of measurement indicated; samples or measurements shall be representative of the volume and nature of the monitored discharge.

Effluent Characteristic	Frequency	Reporting Values <sup>1</sup>	Sample Type <sup>1</sup>
Flow Rate, MGD	Continuous	Daily Maximum; 30-Day Average	Instantaneous
pH, standard units	Daily	Daily Minimum; Daily Maximum	Instantaneous <sup>2, 6</sup>
Oil and Grease, visual <sup>3</sup>	Daily	Presence or Absence of sheen	Visual
Oil and Grease, (hexane ext) mg/L <sup>3</sup>	Contingent	Daily Maximum	Grab
Water Temperature, °C	Daily	Daily Maximum; 30-Day Average	Instantaneous <sup>4, 6</sup>
Percent Removal, TSS, %	Monthly	30-Day Average	Calculated
Percent Removal, BOD <sub>5</sub> , %	Monthly	30-Day Average	Calculated
Five Day Biochemical Oxygen Demand (BOD <sub>5</sub> ), mg/L	Three Times/Week	Max. 7-Day Average; 30-Day Average	24-hour Composite
Five Day Biochemical Oxygen Demand (BOD <sub>5</sub> ), mg/L (Influent)	Three Times/Week	30-Day Average	24-hour Composite
Total Suspended Solids (TSS), mg/L	Three Times/Week	Max. 7-Day Average; 30-Day Average	24-hour Composite
Total Suspended Solids (TSS), mg/L (Influent) <sup>5</sup>	Three Times/Week	30-Day Average	24-hour Composite
Total Coliform, no./100 mL	Three Times/Week <sup>5</sup>	Daily Maximum; 30-Day Geometric Mean	Grab
Fecal Coliform, no./100 mL	Three Times/Week <sup>5</sup>	Daily Maximum; 30-Day Geometric Mean	Grab

<sup>1</sup> See Definitions.

<sup>2</sup> pH is to be taken within 15 minutes of sample collection with a pH meter. The pH meter must be capable of simultaneous calibration to two points on the pH scale that bracket the expected pH and are approximately three standard units apart. The pH meter must read to 0.01 standard units and be equipped with temperature compensation adjustment. Readings shall be reported to the nearest 0.1 standard units.

<sup>3</sup> Oil and grease shall be visually monitored during discharge. In the event that an oil sheen or floating oil is observed during discharge, grab samples shall be taken immediately, analyzed and reported.

<sup>4</sup> The water temperature of the effluent shall be taken as a field measurement at the time of sampling. Measurement shall be made with a mercury-filled, or dial type thermometer, or a thermistor. Readings shall be reported to the nearest whole degree Celsius.

<sup>5</sup> If a minimum of five samples are collected in a calendar month, all of the samples collected are to be used in determining the geometric mean. Samples are to be collected at the same time as BOD<sub>5</sub>, TSS, etc. Additional samples are to be collected during any other separate 24-hour periods. If less than five samples are taken during any calendar month, the maximum limit still applies. ***This sampling protocol for E. coli only applies if the discharge occurs between May 1 and September 30.***

Effluent Characteristic	Frequency	Reporting Values <sup>1</sup>	Sample Type <sup>1</sup>
<i>E. coli</i> , no./100 mL	Three Times/Week <sup>5</sup>	Daily Maximum; 30-Day Geometric Mean	Grab
Ammonia-Nitrogen (as N), mg/L	Three Times/Week	Daily Maximum; 30-Day Average	Grab <sup>6</sup>
Ammonia-Nitrogen (as N), lbs/day	Three Times/Week	Daily Maximum; 30-Day Average	Grab <sup>7</sup>
Dissolved Oxygen, mg/L	Five Times/Week	Daily Minimum	Grab
Acute Whole Effluent Toxicity	Quarterly <sup>8</sup>	Pass/Fail	Grab
<b>Parameters listed in ARSD, Section 74:52:02:42 and Molybdenum:</b>			
Antimony, Total Recoverable (mg/L)	Annually	Actual Results	24-hr Composite <sup>9</sup>
Arsenic, Total Recoverable(mg/L)	Annually	Actual Results	24-hr Composite <sup>9</sup>
Beryllium, Total Recoverable (mg/L)	Annually	Actual Results	24-hr Composite <sup>9</sup>
Cadmium, Total Recoverable (mg/L)	Annually	Actual Results	24-hr Composite <sup>9</sup>
Chromium, Total Recoverable (mg/L)	Annually	Actual Results	24-hr Composite <sup>9</sup>
Copper, Total Recoverable (mg/L)	Annually	Actual Results	24-hr Composite <sup>9</sup>
Cyanide, Total (mg/L)	Annually	Actual Results	Grab <sup>9</sup>
Cyanide, Weak Acid Dissociable (mg/L)	Annually	Actual Results	Grab <sup>9</sup>
Lead, Total Recoverable (mg/L)	Annually	Actual Results	24-hr Composite <sup>9</sup>
Mercury, Total (mg/L)	Annually	Actual Results	24-hr Composite <sup>9</sup>
Molybdenum, Total Recoverable (mg/L)	Annually	Actual Results	24-hr Composite <sup>9</sup>
Nickel, Total Recoverable (mg/L)	Annually	Actual Results	24-hr Composite <sup>9</sup>
Selenium, Total Recoverable (mg/L)	Annually	Actual Results	24-hr Composite <sup>9</sup>
Silver, Total Recoverable (mg/L)	Annually	Actual Results	24-hr Composite <sup>9</sup>
Thallium, Total Recoverable (mg/L)	Annually	Actual Results	24-hr Composite <sup>9</sup>
Zinc, Total Recoverable (mg/L)	Annually	Actual Results	24-hr Composite <sup>9</sup>
Phenols, Total (mg/L)	Annually	Actual Results	Grab <sup>9</sup>
Total Hardness (as CaCO <sub>3</sub> ), mg/L	Annually	Actual Results	24-hr Composite <sup>9</sup>

<sup>6</sup> The pH and temperature of the effluent along with the receiving stream flow shall be determined when ammonia samples are collected.

<sup>7</sup> The pounds per day shall be calculated for each sample based on the concentration and the flow discharged (in MGD) using the following equation:  $Q \times C \times 8.346$ ; where, Q= Effluent flow in MGD, and C = Sample concentration in mg/L

<sup>8</sup> The permittee shall obtain and analyze a valid whole effluent toxicity sample at least once during each calendar quarter.

<sup>9</sup> The permittee shall sample and analyze the influent and effluent for those parameters listed in ARSD 74:52:02:42 and molybdenum on an annual basis. See Section 3.17.5 of the permit for sampling requirements.

## 1.5 Final Self-Monitoring Requirements

Effective **May 1, 2013** and lasting through the life of this permit, all discharges, sanitary sewer overflows, and unauthorized releases shall be monitored for the following parameters at the frequency and with the type of measurement indicated; samples or measurements shall be representative of the volume and nature of the monitored discharge.

Effluent Characteristic	Frequency	Reporting Values <sup>1</sup>	Sample Type <sup>1</sup>
Flow Rate, MGD	Continuous	Daily Maximum; 30-Day Average	Instantaneous
pH, standard units	Daily	Daily Minimum; Daily Maximum	Instantaneous <sup>2, 6</sup>
Oil and Grease, visual <sup>3</sup>	Daily	Presence or Absence of sheen	Visual
Oil and Grease, (hexane ext) mg/L <sup>3</sup>	Contingent	Daily Maximum	Grab
Water Temperature, °C	Daily	Daily Maximum; 30-Day Average	Instantaneous <sup>4, 6</sup>
Percent Removal, TSS, %	Monthly	30-Day Average	Calculated
Percent Removal, BOD <sub>5</sub> , %	Monthly	30-Day Average	Calculated
Five Day Biochemical Oxygen Demand (BOD <sub>5</sub> ), mg/L	Three Times/Week	Max. 7-Day Average; 30-Day Average	24-hour Composite
Five Day Biochemical Oxygen Demand (BOD <sub>5</sub> ), mg/L (Influent)	Three Times/Week	30-Day Average	24-hour Composite
Total Suspended Solids (TSS), mg/L	Three Times/Week	Max. 7-Day Average; 30-Day Average	24-hour Composite
Total Suspended Solids (TSS), mg/L (Influent) <sup>5</sup>	Three Times/Week	30-Day Average	24-hour Composite
Total Coliform, no./100 mL	Three Times/Week <sup>5</sup>	Daily Maximum; 30-Day Geometric Mean	Grab

<sup>1</sup> See Definitions.

<sup>2</sup> pH is to be taken within 15 minutes of sample collection with a pH meter. The pH meter must be capable of simultaneous calibration to two points on the pH scale that bracket the expected pH and are approximately three standard units apart. The pH meter must read to 0.01 standard units and be equipped with temperature compensation adjustment. Readings shall be reported to the nearest 0.1 standard units.

<sup>3</sup> Oil and grease shall be visually monitored during discharge. In the event that an oil sheen or floating oil is observed during discharge, grab samples shall be taken immediately, analyzed and reported.

<sup>4</sup> The water temperature of the effluent shall be taken as a field measurement at the time of sampling. Measurement shall be made with a mercury-filled, or dial type thermometer, or a thermistor. Readings shall be reported to the nearest whole degree Celsius.

<sup>5</sup> If a minimum of five samples are collected in a calendar month, all of the samples collected are to be used in determining the geometric mean. Samples are to be collected at the same time as BOD<sub>5</sub>, TSS, etc. Additional samples are to be collected during any other separate 24-hour periods. If less than five samples are taken during any calendar month, the maximum limit still applies. ***This sampling protocol for E. coli only applies if the discharge occurs between May 1 and September 30.***

Effluent Characteristic	Frequency	Reporting Values <sup>1</sup>	Sample Type <sup>1</sup>
<i>E. coli</i> , no./100 mL	Three Times/Week <sup>5</sup>	Daily Maximum; 30-Day Geometric Mean	Grab
Ammonia-Nitrogen (as N), mg/L	Three Times/Week	Daily Maximum; 30-Day Average	Grab <sup>6</sup>
Ammonia-Nitrogen (as N), lbs/day	Three Times/Week	Daily Maximum; 30-Day Average	Grab <sup>7</sup>
Dissolved Oxygen, mg/L	Five Times/Week	Daily Minimum	Grab
Acute Whole Effluent Toxicity	Quarterly <sup>8</sup>	Pass/Fail	Grab
<b>Parameters listed in ARSD, Section 74:52:02:42 and Molybdenum:</b>			
Antimony, Total Recoverable (mg/L)	Annually	Actual Results	24-hr Composite <sup>9</sup>
Arsenic, Total Recoverable(mg/L)	Annually	Actual Results	24-hr Composite <sup>9</sup>
Beryllium, Total Recoverable (mg/L)	Annually	Actual Results	24-hr Composite <sup>9</sup>
Cadmium, Total Recoverable (mg/L)	Annually	Actual Results	24-hr Composite <sup>9</sup>
Chromium, Total Recoverable (mg/L)	Annually	Actual Results	24-hr Composite <sup>9</sup>
Copper, Total Recoverable (mg/L)	Annually	Actual Results	24-hr Composite <sup>9</sup>
Cyanide, Total (mg/L)	Annually	Actual Results	Grab <sup>9</sup>
Cyanide, Weak Acid Dissociable (mg/L)	Annually	Actual Results	Grab <sup>9</sup>
Lead, Total Recoverable (mg/L)	Annually	Actual Results	24-hr Composite <sup>9</sup>
Mercury, Total (mg/L)	Annually	Actual Results	24-hr Composite <sup>9</sup>
Molybdenum, Total Recoverable (mg/L)	Annually	Actual Results	24-hr Composite <sup>9</sup>
Nickel, Total Recoverable (mg/L)	Annually	Actual Results	24-hr Composite <sup>9</sup>
Selenium, Total Recoverable (mg/L)	Annually	Actual Results	24-hr Composite <sup>9</sup>
Silver, Total Recoverable (mg/L)	Annually	Actual Results	24-hr Composite <sup>9</sup>
Thallium, Total Recoverable (mg/L)	Annually	Actual Results	24-hr Composite <sup>9</sup>
Zinc, Total Recoverable (mg/L)	Annually	Actual Results	24-hr Composite <sup>9</sup>
Phenols, Total Recoverable (mg/L)	Annually	Actual Results	Grab <sup>9</sup>
Total Hardness (as CaCO <sub>3</sub> ), (mg/L)	Annually	Actual Results	24-hr Composite <sup>9</sup>

<sup>6</sup> The pH and temperature of the effluent along with the receiving stream flow shall be determined when ammonia samples are collected.

<sup>7</sup> The pounds per day shall be calculated for each sample based on the concentration and the flow discharged (in MGD) using the following equation:  $Q \times C \times 8.346$ ; where, Q= Effluent flow in MGD, and C = Sample concentration in mg/L

<sup>8</sup> The permittee shall obtain and analyze a valid whole effluent toxicity sample at least once during each calendar quarter.

<sup>9</sup> The permittee shall sample and analyze the influent and effluent for those parameters listed in ARSD 74:52:02:42 and molybdenum on an annual basis. See Section 3.17.5 of the permit for sampling requirements.

### **Whole Effluent Toxicity Testing – Acute Toxicity**

Effective immediately, the permittee shall, at least once each calendar quarter, conduct acute static replacement toxicity tests on a sample of the discharge. Quarterly samples shall be collected on a two day progression; i.e., if the first quarterly sample is on a Monday, during the next quarter, sampling shall be on a Wednesday, etc.

The replacement static toxicity test shall be conducted in accordance with the procedure set out in the latest revision of “Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms,” Fifth Edition, October 2002 (EPA-821-R-02-012). The permittee shall alternate test species, conducting an acute toxicity test using *Ceriodaphnia dubia* in one quarter, and an acute toxicity test using *Pimephales promelas* (fathead minnows) in the next quarter.

Acute toxicity occurs when 50 percent or more mortality is observed for either species at any effluent concentration. If more than 10 percent control mortality occurs, the test shall be repeated until satisfactory control survival is achieved.

If acute toxicity occurs, an additional test shall be conducted within two weeks of the date of when the permittee learned of the failed test. If only one species fails, retesting may be limited to this species. Should acute toxicity occur in the second test, testing shall occur once a month until further notified by the department.

Actual test results including all chemical and physical data shall be submitted along with the Discharge Monitoring Report (DMR) that is submitted for the end of the reporting calendar quarter (e.g., whole effluent results for the calendar quarter ending March 31 shall be reported with the DMR due April 28, with the remaining reports submitted with DMRs due each July 28, October 28, and January 28).

### **1.6 Toxicity Reduction Evaluation (TRE)/Toxicity Identification Evaluation (TIE)**

If acute and/or chronic toxicity occurs, an additional test shall be conducted within two weeks of the date of when the permittee learned of the test. If only one species fails, retesting may be limited to this species. Should acute toxicity and/or chronic toxicity occur in the second test, a TIE-TRE shall be undertaken by the permittee to establish the cause of the toxicity, locate the source(s) of the toxicity, and develop control of, or treatment for the toxicity. Failure to initiate, or conduct an adequate TIE-TRE, or delays in the conduct of such tests, shall not be considered a justification for noncompliance with the whole effluent toxicity limits. A TRE plan needs to be submitted to the permitting authority within 45 days after confirmation of the continuance of effluent toxicity.

### **1.7 Chronic Toxicity Limit-Reopener Provision**

This permit may be reopened and modified (following proper administrative procedures) to include chronic whole effluent toxicity limits if any other information or data are developed indicating that chronic whole effluent toxicity limits are needed. Also see Section 3.15 of this permit for additional whole effluent toxicity reopener provisions.

If acceptable to the permit issuing authority, and if in compliance with current regulations, this permit may be reopened and modified to incorporate TRE conclusion relating to additional numerical limits, a modified compliance schedule, and or modified whole effluent protocol.



## **1.8 Inspection Requirements**

The permittee shall inspect its wastewater treatment facility on at least a **daily** basis. In addition, the inspection shall be performed to determine if proper operation and maintenance procedures are being undertaken at the wastewater treatment facility. Lift stations shall be inspected at least **weekly**. The permittee shall maintain a notebook recording information obtained during the inspection. At a minimum, the notebook shall include the following:

1. Date and time of the inspection;
2. Name of the inspector(s);
3. Identification of operational problems and/or maintenance problems;
4. Recommendations, as appropriate, to remedy identified problems;
5. A brief description of any actions taken with regard to problems identified; and,
6. Other information, as appropriate.

The permittee shall maintain the notebook in accordance with proper record-keeping procedures and shall make the notebook available for inspection, upon request, by the Secretary or the U.S. Environmental Protection Agency.

## **2.0 MONITORING, RECORD KEEPING, AND REPORTING REQUIREMENTS**

### **2.1 Representative Sampling**

Samples taken in compliance with the monitoring requirements established under this permit shall be collected from the effluent stream prior to discharge into the receiving waters. Samples and measurements shall be representative of the volume and nature of the monitored discharge.

### **2.2 Monitoring Procedures**

Monitoring shall be conducted according to test procedures approved under ARSD, Section 74:52:03:06, a.b.r. 40 CFR, Part 136, unless other test procedures have been specified in this permit.

### **2.3 Reporting of Monitoring Results**

Effluent monitoring results obtained during the previous month shall be summarized and reported on the appropriate Discharge Monitoring Report Forms (EPA No. 3320-1) and submitted to SDDENR as follows: **001A** DMRs must be submitted **monthly**, **001W** DMRs must be submitted **quarterly**, and **001MA** DMRs must be submitted **annually**. The DMRs must be postmarked no later than the 28<sup>th</sup> day of the month following the completed reporting period. If no discharge occurs during the reporting period, "no discharge" shall be reported. Legible copies of these, and all other reports required herein, shall be signed and certified in accordance with Section 2.4 and submitted to the Secretary at the following address:

original to: Department of Environment & Natural Resources  
Surface Water Quality  
PMB 2020  
Joe Foss Building  
523 East Capitol  
Pierre SD 57501-3182

### **2.4 Signatory Requirements**

All applications, reports or information submitted to the Secretary shall be signed and certified.

1. All permit applications shall be signed by either a principal executive officer or ranking elected official.
2. All reports required by the permit and other information requested by the Secretary shall be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:
  - a. The authorization is made in writing by a person described above and submitted to the Secretary; and,
  - b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility, such as the position of superintendent or equivalent responsibility, or an individual or position having overall responsibility for environmental matters. (A duly authorized representative may be either a named individual or any individual occupying a named position.)
3. If an authorization under 2.a above is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization must be submitted to the Secretary.
4. Any person signing a document under this section shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am

aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

**2.5 Additional Monitoring by the Permittee**

If the permittee monitors, at the designated points, any pollutants more frequently than required by this permit, using test procedures approved under ARSD, Section 74:52:03:06, a.b.r. 40 CFR 136 or as specified in this permit, the results of this monitoring shall be used in determining compliance with this permit.

**2.6 Records Contents**

Records of monitoring information shall include:

1. The date, exact place, and time of sampling or measurements;
2. The initials or names of the individuals who performed the sampling or measurements;
3. The dates analyses were performed;
4. The time analyses were initiated;
5. The initials or names of individuals who performed the analyses;
6. References and written procedures, when available, for the analytical techniques or methods used; and
7. The results of such analyses, including the bench sheets, instrument readouts, computer disks or tapes, etc., used to determine these results.

**2.7 Duty to Provide Information**

The permittee shall furnish to the Secretary, within a reasonable time, any information the Secretary may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the Secretary, upon request, copies of records required to be kept by this permit.

**2.8 Other Information**

When the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or any report to the Secretary, it shall promptly submit such facts or information.

**2.9 Planned Changes**

The permittee shall give notice to the Secretary as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when the alteration or addition could significantly change the nature or increase the quantity of pollutant discharged, or could result in noncompliance with permit conditions.

**2.10 Retention of Records**

The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least three years from the date of the sample, measurement, report, or application. This period may be extended by request of the Secretary at any time. Data collected on site, copies of Discharge Monitoring Reports, and a copy of this permit must be maintained on site during the duration of the permitted activity.

**2.11 Twenty-four Hour Notice of Noncompliance Reporting**

1. The permittee shall report any emergency related to this permit or permitted-facility which may endanger health or the environment as soon as possible, but no later than 24 hours after becoming aware of the circumstances. The report shall be made to the Secretary at (605) 773-3351 during regular business hours or to South Dakota Emergency Management at (605) 773-3231 any other time.

2. Instances of noncompliance, unanticipated bypasses, sanitary sewer overflows, unauthorized releases, and upsets shall be reported to the Secretary at (605) 773-3351 by the first workday (8:00 a.m. – 5:00 p.m. Central Time) following the day the permittee became aware of the circumstances.
3. A written submission shall also be provided within five days of becoming aware of the circumstances above. The written submission shall contain:
  - a. A description of the event and its cause;
  - b. The period of the event, including exact dates and times;
  - c. The estimated time the event is expected to continue if it has not been corrected; and,
  - d. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the event.
4. The Secretary may waive the written report on a case-by-case basis if the oral report has been received within 24 hours by the Surface Water Quality Program, South Dakota Department of Environment and Natural Resources, Pierre, (605) 773-3351.
5. Reports shall be submitted in accordance with Sections 2.3 and 2.4 of this permit.

The permittee shall give advance notice to the Secretary of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

#### **2.12 Other Noncompliance Reporting**

Instances of noncompliance not required to be reported within 24 hours shall be reported at the time that monitoring reports for Section 2.3 are submitted. The reports shall contain the information listed in Section 2.11.

#### **2.13 Permit Transfers**

This permit may be transferred to a new permittee if:

1. The current permittee notifies the Secretary at least 30 days in advance of the proposed transfer date; and
2. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them.

The Secretary will notify the existing and new permittee of his or her intent to transfer, modify, or revoke and reissue the permit based on the information received and other permit information.

### **3.0 COMPLIANCE REQUIREMENTS**

#### **3.1 Duty to Comply**

The permittee shall comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

#### **3.2 Duty to Mitigate**

The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

#### **3.3 Proper Operation and Maintenance**

The permittee shall at all times properly operate and maintain all facilities and treatment and control systems (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit or other conditions required by the Secretary upon issuance. This may include the maintenance of freeboard levels of lagoons or holding ponds. Proper operation and maintenance may also include adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

#### **3.4 Need to Halt or Reduce Activity not a Defense**

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

#### **3.5 Inspection and Entry**

The permittee shall allow the Secretary or EPA, upon the presentation of credentials and other documents as may be required by law, to:

1. Enter the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;
2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and,
4. Sample or monitor at reasonable times, for the purpose of assuring permit compliance or as otherwise authorized by the South Dakota Water Pollution Control Act, any substances or parameters at any location.

#### **3.6 Removed Substances**

Collected screenings, grit, solids, sludges, or other pollutants removed in the course of treatment shall be disposed of in such a manner so as to prevent any pollutant from entering any waters of the state or creating a health hazard in accordance with applicable requirements of SDCL 34A-2, -6, and -11.

#### **3.7 Bypass of Treatment Facilities**

1. Anticipated Bypass. Anticipated bypasses causing violation of effluent limits are prohibited, unless the Secretary approves the anticipated bypass after considering its adverse effects and determines that it will meet the following conditions:
  - a. The bypass was unavoidable to prevent loss of life, threat to public health, personal injury, or severe property damage;
  - b. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment

should have been installed in the exercise of reasonable engineering judgement to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and,

- c. The permittee submitted notices as required under paragraph three of this section.
2. Anticipated Bypass Not Causing Violations. The permittee may allow anticipated bypasses to occur which do not cause effluent limit violations, but only if for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of paragraphs one and three of this section.
3. Notice of Bypass:
  - a. Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice at least 10 days before the date of the bypass.
  - b. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required under Section 2.11.

### **3.8 Sanitary Sewer Overflows**

1. Reporting. Overflows from the sanitary sewer collection system shall be reported to the Secretary at (605) 773-3351 as soon as possible, but not later than the first business day after becoming aware of the sanitary sewer overflow. Anticipated overflows shall be reported in advance, if possible. In addition to verbal notification, the permittee shall submit to the Secretary a written report in accordance with Section 2.11, paragraphs three and four.
2. Sampling. Sanitary sewer overflows shall be sampled for the parameters of BOD<sub>5</sub>, pH, TSS, ammonia-nitrogen, and fecal and total coliform bacteria. Overflows should be sampled on a daily basis until the overflow is terminated. The results shall be included with the written report required in paragraph one.
3. Plan Development. In the event that the Secretary notifies the permittee of the need to develop a capacity, management, operation, and maintenance program in order to address, reduce, or eliminate the frequency of sanitary sewer overflows, the permittee shall submit such a plan to the Secretary. The plan shall, at a minimum, address the following areas:
  - a. Sewer management program: This program includes personnel organizational structure, training, communication information systems, noncompliance notification program, and other appropriate items;
  - b. Collection system operation program: This program includes operational budgeting, monitoring, safety, emergency preparedness and response, pump stations, operational record keeping, and other appropriate items;
  - c. Collection system maintenance program: This program includes maintenance budgeting, planned and unplanned maintenance; sewer cleaning; maintenance record keeping, parts and equipment inventory, and other appropriate items; and
  - d. Sewer system capacity evaluation: The capacity evaluation includes the following:
    1. System inventory (sewer locations, sizes, slopes, materials, age, condition, etc.);
    2. Identification of problem areas (overflows, surcharged lines, basement backups, etc.)
    3. Capacity evaluation of problem areas (utilizing flow and precipitation records, infiltration and inflow investigation, manhole and pipe inspections and televising, smoke and dye testing, and building inspections); and
    4. Sewer rehabilitation recommendations.

Upon the Secretary's approval of the plan, the permittee shall implement the plan.

### **3.9 Upset Conditions**

1. Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with technology based permit effluent limits if the requirements of paragraph two of this section are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review (i.e., Permittees will have the opportunity for a judicial determination on any claim of upset only in an enforcement action brought for noncompliance with technology-based permit effluent limits).
2. Conditions necessary for a demonstration of upset. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:
  - a. An upset occurred and that the permittee can identify the cause(s) of the upset;
  - b. The permitted facility was at the time being properly operated;
  - c. The permittee submitted notice of the upset as required under Section 2.11; and,
  - d. The permittee complied with mitigation measures required under Section 3.2.
3. Burden of proof. In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset has the burden of proof.

### **3.10 Duty to Reapply**

If the permittee wishes to continue an activity regulated by this permit after its expiration date, the permittee must apply for and obtain coverage under a new permit. The permit application must be submitted at least 180 days before the expiration date of this permit. Periodically during the term of this permit and at the time of reissuance, the permittee may be requested to reaffirm its eligibility to discharge under this permit.

### **3.11 Availability of Reports**

Except for data determined to be confidential under ARSD, Section 74:52:02:17, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the office of SDDENR. Permit applications, permits, and effluent data shall not be considered confidential.

### **3.12 Property Rights**

The Secretary's issuance of this permit, adoption of design criteria, and approval of plans and specifications, does not convey any property rights of any sort, and exclusive privileges, any authorization to damage, injure or use any private property, any authority to invade personal rights, any authority to violate federal, state or local laws or regulations, or any taking, condemnation, or use of eminent domain against any property owned by third parties. The State does not warrant that the permittee's compliance with this permit, design criteria, approved plans and specifications, and operation under this permit, will not cause damage, injury or use of private property, an invasion of personal rights, or violation of federal, state, or local laws or regulations. The permittee is solely and severably liable for all damage, injury or use of private property, invasion of personal rights, infringement of federal, state, or local laws and regulations, or taking or condemnation of property owned by third parties, which may result from actions taken under the permit.

### **3.13 Severability**

The provisions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

### **3.14 Reopener Provision**

This permit may be reopened and modified (following proper administrative procedures) to include the appropriate effluent limits (and compliance schedules, if necessary), or other appropriate requirements if one or more of the following events occurs:

1. Water Quality Standards: The water quality standards of the receiving waters applicable to this general permit are modified in such a manner as to require different effluent limits than contained in this permit.
2. Water Quality Management Plan: A revision to the current water quality management plan is approved and adopted which calls for different effluent limits than contained in this permit.
3. Effluent Guidelines: Effluent limit guidelines are promulgated or revised for point sources covered by this permit;
4. Total Maximum Daily Load: Additional controls in the permit are necessary to implement a total maximum daily load approved by the Secretary and/or EPA.
5. Whole Effluent Toxicity: Whole effluent toxicity is detected in the discharge.
6. Noncompliance: The discharger is a significant contributor of pollution to waters of the state, presents a health hazard, or is in noncompliance with the conditions of the permit; or
7. Other Changes: Other conditions or standards change so that the discharge no longer qualifies for this permit, changes in necessary influent or effluent pollutant monitoring, additional industrial pretreatment requirements become applicable to the permittee, or other items.

### **3.15 Toxicity Limit-Reopener Provision**

This permit may be reopened and modified (following proper administrative procedures) to include a new compliance date, additional or modified numerical limits, a new or different compliance schedule, a change in the whole effluent protocol, or any other conditions related to the control of toxicants if one or more of the following events occur:

1. Toxicity was detected late in the life of the permit near or past the deadline for compliance.
2. The TRE results indicate that compliance with the toxic limits will require an implementation schedule past the date for compliance and the permit issuing authority agrees with the conclusion.
3. The TRE results indicate that the toxicant(s) represent pollutant(s) that may be controlled with specific numerical limits, and the permit issuing authority agrees that numerical controls are the most appropriate course of action.
4. Following the implementation of numerical controls on toxicants, the permit issuing authority agrees that a modified whole effluent protocol is necessary to compensate for those toxicants that are controlled numerically.
5. The TRE reveals other unique conditions or characteristics which, in the opinion of the permit issuing authority, justify the incorporation of unanticipated special conditions in the permit.

### **3.16 Permit Actions**

This permit may be modified, revoked and reissued, or terminated for cause, including failure to comply with any provision of this permit or any condition imposed by the Secretary upon granting coverage under this permit. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.



### 3.17 Industrial Wastes

1. Each significant industrial user must be identified as to qualitative and quantitative characteristics of the discharge as well as production data. A significant industrial user is defined as an industrial user discharging to a publicly owned treatment works (POTW) that satisfies any of the following: (1) has a process wastewater flow of 25,000 gallons or more per average work day or contributes five percent or more of the average dry weather hydraulic or organic capacity of the municipal system receiving the waste; (2) is subject to Categorical Pretreatment Standards under 40 CFR 403.6 and 40 CFR Chapter I, Subchapter N or; (3) is determined by the Control Authority to have a reasonable potential to adversely impact the POTW's operation or for violating any pretreatment standard or requirement (in accordance with 40 CFR 403.8(f)(6)).
2. The permittee must notify the permitting authority of any new introductions by new or existing significant industrial users or any substantial change in pollutants from any significant industrial user. Such notice must contain the information described in paragraph 1 above and be forwarded no later than sixty (60) days following the introduction or change.
3. Pretreatment Standards [ARSD 74:52:11:01, a.b.r. 40 CFR 403.5] developed pursuant to Section 307 of the Federal Clean Water Act require that under no circumstances shall the permittee allow the introduction of the following pollutants to the waste treatment system from any source of nondomestic discharge:
  - a. Pollutants which create a fire or explosion hazard in the publicly owned treatment works (POTW), including, but not limited to, wastestreams with a closed cup flashpoint of less than sixty (60) degrees Centigrade (140 degrees Fahrenheit) using the test methods specified in ARSD 74:28:22:01, a.b.r. 40 CFR 261.21;
  - b. Pollutants which will cause corrosive structural damage to the POTW, but in no case discharges with pH lower than 5.0, unless the works are specifically designed to accommodate such discharges;
  - c. Solid or viscous pollutants in amounts which will cause obstruction to the flow in the POTW, or other interference with the operation of the POTW;
  - d. Any pollutant, including oxygen demanding pollutants (e.g., BOD), released in a discharge at a flow rate and/or pollutant concentration which will cause interference with the POTW;
  - e. Heat in amounts which will inhibit biological activity in the POTW resulting in interference but in no case heat in such quantities that the temperature at the POTW treatment plant exceeds forty (40) degrees Centigrade (104 degrees Fahrenheit);
  - f. Petroleum oil, nonbiodegradable cutting oil, or products of mineral oil origin in amounts that will cause interference or pass through;
  - g. Pollutants which result in the presence of toxic gases, vapors, or fumes within the POTW in a quantity that may cause acute worker health and safety problems;
  - h. Any trucked or hauled pollutants, except at discharge points designated by the POTW;
  - i. Any pollutant which causes pass through or interference; and,
  - j. In addition to the general limits expressed above, more specific pretreatment limits have been promulgated for specific industrial categories under Section 307 of the Act (see ARSD, Chapter 74:52:10, a.b.r. 40 CFR Subchapter N, Parts 405 through 471, for specific information).
4. The permittee shall provide adequate notice to the Secretary of the South Dakota Department of Environment and Natural Resources of:
  - a. Any new introduction of pollutants into the treatment works from an indirect discharger (i.e., industrial user) which would be subject to Sections 301 or 306 of the Federal Clean Water Act if it were directly discharging those pollutants;
  - b. Any substantial change in the volume or character of pollutants being introduced into the treatment works by an industrial user introducing pollutants into the treatment works at the time of application of the SWD permit; and

- c. For the purposes of this section, adequate notice shall include information on:
  - 1. The quality and quantity of effluent to be introduced into such treatment works; and
  - 2. Any anticipated impact of the change on the quantity or quality of effluent to be discharged from such publicly owned treatment works.
- 5. The permittee shall sample and analyze the influent and effluent for those parameters listed in ARSD 74:52:02:42 and Molybdenum. The sampling shall commence within thirty (30) days from the effective date of the permit and continue at a frequency of once per year.

Sampling and analytical procedures shall be in accordance with guidelines established in ARSD 74:52:03:06, a.b.r. 40 CFR 136. Where sampling methods are not specified the effluent samples collected shall be composite samples consisting of at least twelve (12) aliquots collected at approximately equal intervals over a representative 24 hour period and composited according to flow. Where composite samples are inappropriate, at least three (3) grab samples, taken at equal intervals over a representative 24 hour period, shall be taken.

The results of these analyses shall be attached to, and reported along with the Discharge Monitoring Report (DMR) submitted for the end of that reporting period.
- 6. At such time as a specific pretreatment limit becomes applicable to an industrial user of the permittee, the permit issuing authority may, as appropriate, do the following:
  - a. Amend the permittee's SWD discharge permit to specify the additional pollutant(s) and corresponding effluent limit(s) consistent with the applicable national pretreatment limit;
  - b. Require the permittee to specify, by ordinance, contract, or other enforceable means, the type of pollutant(s) and the maximum amount which may be discharged to the permittee's facility for treatment. Such requirement shall be imposed in a manner consistent with the POTW program development requirements of the General Pretreatment Regulations at [ARSD 74:52:11:01, a.b.r. 40 CFR 403]; and/or,
  - c. Require the permittee to monitor its discharge for any pollutant which may likely be discharged from the permittee's facility, should the industrial user fail to properly pretreat its waste.
- 7. The permit issuing authority retains, at all times, the right to take legal action against the industrial user and/or the treatment works, in those cases where a SWD permit violation has occurred because of the failure of an industrial user to discharge at an acceptable level.

#### **4.0 PENALTIES FOR NONCOMPLIANCE**

##### **4.1 Penalties for Violations of Permit Conditions**

Any person who violates a permit condition is in violation of the provisions of SDCL 34A-2-36, and is subject to penalties under SDCL 34A-2-75. In addition to a jail sentence authorized by SDCL 22-6-2, such violators are subject to a criminal fine not to exceed ten thousand dollars per day of violation. The violator is also subject to a civil penalty not to exceed ten thousand dollars per day of violation, or for damages to the environment of this state. Except as provided in Sections 3.6 and 3.8, nothing in this permit shall be construed to relieve the permittee of the civil or criminal penalties for noncompliance.

##### **4.2 Penalties for Tampering**

Any person who falsifies, tampers with, or knowingly render inaccurate, any monitoring device or method required to be maintained under this permit is in violation of the provisions of SDCL 34A-2-77, and is subject to penalties under SDCL 34A-2-75. In addition to a jail sentence authorized by SDCL 22-6-2, such violators are subject to a civil penalty not to exceed ten thousand dollars per day of violation, or for damages to the environment of this state.

##### **4.3 Penalties for Falsification of Reports**

Any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or noncompliance, is in violation of the provisions of SDCL 34A-2-77, and is subject to penalties under SDCL 34A-2-75. In addition to a jail sentence authorized by SDCL 22-6-2, such violators are subject to a criminal fine not to exceed ten thousand dollars per day of violation. The violator is also subject to a civil penalty not to exceed ten thousand dollars per day of violation, or for damages to the environment of this state.

##### **4.4 Oil and Hazardous Substance Liability**

Nothing in this permit shall be construed to preclude SDDENR from taking any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under section 311 of the federal Clean Water Act.